HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b)

Description of the case

W. P. No. 986/2005 (S/S)

Sohan Singh Gangola

Vs.

State of Uttaranchal through & others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 21.12.2005

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

WRIT PETITION NO. 986 of 2005 (S/S)

Sohan Singh Gangola @ Soban Singh
S/o Late Madan Singh Gangola,
R/o Village Bagar,
P.O. Pangot,
District Nainital. ..... Petitioner.

Vs.

1. State of Uttaranchal through
   Secretary, Medical, Civil Secretariat,
   Dehradun,
2. Regional Ayurvedic and Yunani Medical Officer,
   Nainital at Haldwani.
3. The Director, Ayurvedic and Yunani Health,
   Uttaranchal.
4. Medical Officer, Government Ayurvedic and
   Yunani, Hospital, Bagar,
   Nainital. ..... Respondents.

December 21,2005

Sri S.K. Mandal, learned counsel for the petitioner.
Sri Harendar Belwal, Sanding Counsel for the State.

Hon'ble Rajesh Tandon, J.

1. Heard Sri S.K. Mandal, leaned counsel for the petitioner and Sri Harendra Belwal, learned counsel for the State.

2. By the present writ petition, the petitioner has prayed for a writ of mandamus directing the respondents to regularize the services of the petitioner and pay him full and regular salary as admission to the State Government Employees without any technical objection.

3. As will appear from the record of the writ petition as well as the counter affidavit that the petitioner was appointed on the compassionate ground as a class IV employee in place of his late father Sri Madan Singh, who died on 09.03.1996. Initially, the mother of the petitioner was appointed on 05.09.1997 and thereafter she made a representation to the respondent no. 2 that since for her

health was not in condition to do work, her son be allowed to work after attaining the age of majority. However, on 01.07.2004, the respondent no. 2 orally directed the petitioner to work and since then he is working as Class IV employee with ll satisfaction of the authorities concerned. On 15.06.2005, the petitioner has made a representation to the respondent stating therein that he is working in a meager sum of Rs. 25/- per month and, therefore, he has prayed for regularization in his favour. A copy of the representation has been annexed as Annexure 9 to writ petition.

4. A counter affidavit has been filed by the Standing Counsel wherein it has been admitted that the petitioner is getting a sum of Rs. 25/- per month. Paragraph 4, 6 and 7 of the counter affidavit reads as under:-

> That the contents of para 2 of the writ petition are incorrect and misleading hence denied. It is stated that the petitioner was neither appointed against the vacant post of Class IV nor he was appointed in dying in harness. One post of Class IV is sanctioned in the hospital in which the regular employee is working. It is provided that in the out door hospitals on part time sweeper can be engaged on Rs. 25/- per month, therefore, the contents pertains in para are totally false and misleading.
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> That the contents of para 4 of the writ petition are denied as incorrect and misleading. In fact, the mother of the petitioner, Smt. Paruli Devi was engaged in the hospital in merely temporary/part time basis at the rate of Rs. 25/- per month as sweeper. The said Smt. Paruli Devi was never been appointed in dying in harness after the death of her husband. As there is no post of sweeper of Class IV sanctioned in the hospital hence there is significance of appointment of Smt. Paruli Devi in dying in harness nor her husband was regular employee in the hospital. The letter of engagement dated 5.9.1997 of Smt. Paruli Devi

is Annexed as Annexure 2 to the writ petition is self explanatory in this regard.

That the contents of para 5 of the writ petition as stated are not admitted. The Pharmacist Incharge of he hospital has informed the respondent no.2 that Smt. Paruli Devi has assumed the charge of part time sweeper of the hospital vide its letter dated 15/9/12997 annexed as Annexure 3 to the writ petition is self explanatory.

5. A rejoinder affidavit has been filed by the petitioner where in paragraph 4 of the rejoinder affidavit, it has been stated that the petitioner has been replaced by her mother and is getting a sum of Rs. 25/-per month alone.

6. A perusal of the record shows that the petitioner is in the employment and is getting a sum of Rs. 25/- per month only. This is a case where there is a real violation of human rights. Admittedly, after the father of the petitioner expired during service and in his place, appointment was given to his mother and then to the petitioner, but no orders have been passed till today either for regularisation or for payment of wages, therefore, the matter requires consideration by the respondents for payment of at least minimum wages to the petitioner. In the case of Kapila Hingorani Vs. State of Bihar –(2003) 6 SCC 1, the apex Court has observed as under:-

> "19. According to the petitioner starvation deaths and/or commission of suicide by the employees of the State-owned corporations being admitted, this Court should issue interim directions for payment of salaries to the employees. Ms. Hingorani would contend that the government companies or corporations will have to discharge their constitutional obligations in terms of Article 21 of the Constitution of India. In support of the said contention reliance has been placed in A.P.S.R.T.C. Vs. ITO, Western Coalfields Ltd. Vs. Special Area Development Authority, Hem

Chand vs. Delhi Cloth and General Mills Co. Ltd. and Som Prakash Rekhi Vs. Union of India."

"52. Yet again in Shantistar Buliders Vs. Naryan Khimalal Totame – (1990) l SCC 520, this Court observed:

9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in."

8. In Board of Trustees of the Port of Bombay Vs. Dilipkumar Rachavendranath Nadkarni and others (1983) l SCC 124), the Hon'ble Supreme Court dealt with the right of a workman. The Hon'ble Supreme Court observed as under:

"The expression 'life' has much wider meaning. Where therefore the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilization which make life worth living would be jeopardized and the same can be put in jeopardy only by law which inheres fair procedure. In this context one can recall the famous words of Chapter II of Bhagwad-Gita:

Sambhavitasya Cha Kirti Marnadati Rchyate

Therefore in this case, there can be no doubt that for additional reason that after the Regulation 12(8) case into force, the 1st respondent shall have been given a reasonable opportunity to appear through legal practitioner and failure on their part has vitiated the enquiry. For these reasons, this appeal fails and is dismissed with costs quantified at Rs. 2000."

7. As will appear form Article 38 of he Constitution of India that for securing and protecting social order for the promotion of welfare of people, the socio-economic conditions should be maintained by the Sate. Article 38 of the Constitution of India is quoted below:-

"State to secure a social order or the promotion of welfare of the people-

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order n which justice, social, economic and political, shall inform all the instructions of the national life."

Similar provision has been mentioned in Article 39(d) of the Constitution of India. The same is quoted below:

> **"(d) that there is equal pay for equal work for both men and women;**
> (e) that the health and strength of workers, men and women, and there tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
> (f) that the children are given opportunity and facilities to develop in a health manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

8. Apart from that, Article 43 provides that State shall endeavour to secure, by suitable legislation, work for all workers and their wages are so fixed that a decent standard of life is ensured. The record of the present writ petition shows that no one has taken any care to fix up the minimum wages and the petitioner is getting Rs. 25/- per month which in the present days is hardly sufficient even to have meal of a time. Article 43 of he Constitution of India is quoted below:-

"Living wage, etc, for workers-. The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavor to

promote cottage industries on an individual or cooperative basis rural areas."

9. In the above circumstances, the writ petition is allowed. The respondents are directed to fix minimum pay which is payable to the petitioner and any amount of arrears also may be paid to the petitioner form the date the petitioner was permitted to join.

10. Copy of this order shall be forwarded to the Chief Secretary of the Uttaranchal for compliance of the above order.

(Rajesh Tandon, J.)

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